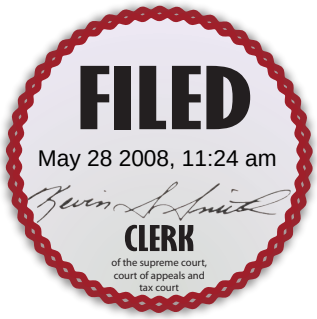

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IN THE
COURT OF APPEALS OF INDIANA

FELIPE GONZALEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0711-CR-971
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
The Honorable Melissa Kramer, Commissioner
Cause No. 49G16-0704-FD-62468
Cause No. 49G16-0704-FD-74155

May 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Felipe Gonzalez appeals his convictions for Class D felony intimidation, two counts of class A misdemeanor invasion of privacy, and two counts of Class B misdemeanor battery. We affirm.

Issues

The restated issues before us are:

I. whether Gonzalez may be convicted of two counts of invasion of privacy;

II. whether there is sufficient evidence to support his intimidation conviction; and

III. whether there is sufficient evidence to support his invasion of privacy and battery convictions.

Facts

The evidence most favorable to the convictions is that on February 15, 2007, a no contact order was entered, as a condition of probation, that prohibited Gonzalez from having any contact with Teia Stoner. This order issued after Gonzalez had been convicted of trespassing on Stoner's property. On April 10, 2007, at about 9:00 a.m., Gonzalez repeatedly phoned Stoner while she was at a barbershop having her son J.S.'s hair cut. Eventually, Gonzalez came to the barbershop and began calling Stoner names. Gonzalez initially refused to leave but finally did so when the barber threatened to call police.

Later in the day, after Gonzalez had continued repeatedly phoning Stoner, he came to her house and kicked a dent into the door of Stoner's truck. Stoner called police but

Gonzalez left before they arrived. Later still, at around 5:00 p.m., Gonzalez entered Stoner's house without permission while children were arriving there to attend a birthday party for J.S. Gonzalez grabbed Stoner by the hair and forced her to the floor. He also kicked five-year-old J.S. and shoved Stoner's seven-year-old daughter A.C. He broke Stoner's cell phone in half before she was able to use it to call police. Again, Gonzalez left the scene before police arrived. Finally, at about 9:00 p.m., while J.S. was opening birthday presents, Gonzalez again came to Stoner's house. This time, he pulled Stoner's window air conditioning unit out of the window and broke it by dropping it on the ground.

After these events, Gonzalez went to his mother's house. Gonzalez's mother called police because he was threatening to commit suicide and may have been armed. When police arrived, Gonzalez was calm. However, when officers attempted to handcuff Gonzalez because of the fear that he might be armed, Gonzalez became agitated and said that when he got out of either jail or the hospital, he was going to find the officers and shoot them.

The State charged Gonzalez in two informations with one count of Class D felony intimidation, three counts of Class D felony battery (one each for Stoner, J.S., and A.C.), one count of trespass as both a Class A misdemeanor and elevated to a Class D felony, two counts of Class A misdemeanor battery, one count of Class A misdemeanor interference with reporting a crime, one count of Class A misdemeanor criminal mischief, and three counts of Class A misdemeanor invasion of privacy. After a bench trial, the trial court found Gonzalez guilty of and entered judgments of conviction for the

following: Class D felony intimidation, Class D felony trespass, one count of Class A misdemeanor battery (as to Stoner), two counts of Class B misdemeanor battery (as to J.S. and A.C.), two counts of Class A misdemeanor invasion of privacy, Class A misdemeanor interference with reporting a crime, and Class B misdemeanor criminal mischief. Gonzalez now appeals, challenging his convictions for Class D felony intimidation, the two Class B misdemeanor battery counts, and the two invasion of privacy counts.

Analysis

I. Multiple Intimidation Convictions

The first of Gonzalez's arguments that we address is whether his convictions for two counts of intimidation violate double jeopardy. Although he does not use those exact words, the cases Gonzalez cite apply the Double Jeopardy Clause of the United States Constitution: Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932), In re Snow, 120 U.S. 274, 7 S. Ct. 556 (1887), and Boss v. State, 702 N.E.2d 782 (Ind. Ct. App. 1998).[1] The basic principle of these cases is that "[f]or continuing offenses the State can not arbitrarily divide the offenses into separate time periods in order to multiply the penalties." Boss, 702 N.E.2d at 785. Gonzalez claims that there was at most one continuous offense of invasion of privacy on April 10, 2007, and, therefore, he could only be charged and convicted of one count of that crime.

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[1] Although none of these cases use the words "double jeopardy" or even mention the U.S. Constitution for that matter, Blockburger is understood as providing the test for claims of violations of the federal Double Jeopardy Clause. See Richardson v. State, 717 N.E.2d 32, 48 n.34 (Ind. 1999). Blockburger, in turn, relied upon Snow; Boss relied upon both Blockburger and Snow.

In Snow, the Supreme Court held that the defendant could only be convicted of one count of illegal cohabitation with more than one woman; the government could not convict him of more than one count simply by dividing the time of illegal cohabitation into separate segments. Snow, 120 U.S. at 286, 7 S. Ct. at 562. Likewise, in Boss, this court held the defendant could be convicted of only one count of nonsupport of a dependent where the nonsupport was continuous; the State was not permitted to arbitrarily divide the period of nonsupport into three segments and charge and convict the defendant of three counts. Boss, 702 N.E.2d at 785-86. By contrast, in Blockburger the Supreme Court held the defendant could be convicted of two counts of illegal sale of a narcotic taking place at separate times because each completed sale constituted a separate, distinct violation of the law, despite taking place close in time. Blockburger, 284 U.S. at 302-03, 52 S. Ct. at 181.

This case is more analogous to Blockburger, and not Snow or Boss. Each instance when Gonzalez initiated then terminated contact with Stoner in violation of the no contact order constituted a distinct act of invasion of privacy. See Ind. Code § 35-46-1-15.1(a). Gonzalez did not simply show up once at Stoner's residence and refuse to leave. If that were the case, it might have been impermissible for the State to attempt to divide the time of Gonzalez's presence at Stoner's residence into more than one offense. Instead, Gonzalez physically appeared at Stoner's residence on at least three separate

occasions but left before police arrived.[2] The charging information for the second invasion of privacy count of which Gonzalez was convicted clearly alleged that it was based on his coming to Stoner's house a second time on April 10, 2007. Gonzalez committed at least two separate offenses of invasion of privacy on that date, if not more. The State was permitted to charge and convict Gonzalez of two counts of invasion of privacy.

II. Sufficiency of Evidence—Intimidation

Next, Gonzalez asserts that there is insufficient evidence to support his intimidation conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the role of the fact-finder, not this court, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. Id.

To be convicted of intimidation as charged, the State was required to prove that Gonzalez communicated a threat to a law enforcement officer with intent that the officer be placed in fear of retaliation for a prior lawful act. See I.C. § 35-45-2-1. The charge

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[2] There also were multiple phone calls to Stoner and Gonzalez's appearance at the barbershop, each of which also likely violated the no contact order.

was based on Gonzalez's threat to find and shoot the officers who placed him in handcuffs in response to his mother's call that he was possibly armed and threatening to commit suicide. Gonzalez seems to contend that he obviously was mentally unstable at the time he communicated his threat and, therefore, he lacked the necessary intent to commit intimidation.

We note, however, that Gonzalez fails to assert that he was legally insane at the time. Indiana Code Section 35-41-3-6 provides that a person is not responsible for committing a crime if, because of mental illness, he or she "was unable to appreciate the wrongfulness of the conduct at the time of the offense." This is an affirmative defense upon which the defendant bears the burden of proof. Thompson v. State, 804 N.E.2d 1146, 1148 (Ind. 2004). Although the State must prove that a defendant acted with the requisite mens rea, it has no obligation to prove that a defendant was "sane." Id. (quoting Lyon v. State, 608 N.E.2d 1368, 1370 (Ind. 1993)).

Here, the State clearly presented sufficient evidence that Gonzalez spoke to the officers with the intent to place them in fear of retaliation for a prior lawful act. It was not required to prove that Gonzalez was of legally sound mind when he spoke those words. The burden was on Gonzalez to present evidence that he was so mentally disturbed at that time that he could not appreciate the wrongfulness of his conduct. He did not do so.

III. Sufficiency of Evidence—Invasion of Privacy and Battery

Finally, Gonzalez claims there is insufficient evidence to support his invasion of privacy and Class B misdemeanor battery convictions. We reiterate that we will consider

only the probative evidence and reasonable inferences supporting the convictions and will not assess witness credibility or weigh evidence. Drane, 867 N.E.2d at 146. "It is well established that the testimony of a single eye witness is sufficient to sustain a conviction." Brasher v. State, 746 N.E.2d 71, 72 (Ind. 2001).

Gonzalez asserts, "Putting Ms. Stoner under oath does not change the character of her testimony into something of more probative value than a simple allegation." Appellant's Br. p. 10. This argument directly contravenes Brasher and numerous other cases. Testimony given by a single witness under oath at a trial implicating a defendant clearly does constitute more than a mere allegation; indeed, it is sufficient to sustain a conviction. Gonzalez claims the State could have called witnesses in addition to Stoner to corroborate certain aspects of her testimony. That the State could have presented more evidence in this case does not mean that it was required to do so. The State's failure to call corroborating witnesses was a factor for the trial court to consider in weighing the evidence. Gonzalez's argument is an invitation for us to reweigh evidence and judge witness credibility, and we must decline.

Conclusion

Gonzalez's convictions for two counts of invasion of privacy do not violate double jeopardy principles. There is sufficient evidence to sustain all of his convictions. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.